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## ADMINISTRATIVE RULES AND REGULATIONS

### WATER RESOURCES COST-SHARE PROGRAM

**K.A.R. 11-1-6 Definitions.** (a) "Applicant" means a landowner or legal agent applying for financial assistance to construct or apply conservation or pollution control practices.

(b) "Commission" means the state conservation commission.

(c) "District" means a conservation district that is a political subdivision of the state government with its own governing body of five elected supervisors created under K.S.A. 2-1901 et seq., and amendments thereto, as a special purpose district to develop and carry out soil and water conservation programs within its political boundaries.

(d) "Financial assistance" means financial incentives offered to eligible applicants on a cost-sharing basis to implement approved soil and water conservation and pollution control practices.

(e) "Landowner" means a private or public owner of land or group of persons owning land within the district or, if excepted by the commission, an adjacent district.

(f) "Practice" means a land treatment or management practice constructed or implemented to effect soil erosion control, pollution control, water conservation, and water supply.

(g) "Total maximum daily load" and "TMDL" mean state identification and prioritization of pollutants and specific water bodies with pollutant loadings allocated for specific water bodies and corresponding pollutant-reduction goals developed and strategies implemented.

(h) "Water resources cost-share program" and "WRCSP" mean a state-financed cost-share program providing financial assistance to landowners for the installation of conservation and water quality practices for the restoration and protection of Kansas water resources. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective, T-88-18, July 1, 1987; effective May 1, 1988; amended Aug. 23, 2002.)

**K.A.R. 11-1-7 Allocation of water resources cost-share program funding.** (a) Appropriation for the water resources cost-share program may be used for financial assistance to construct conservation and water quality practices or to contract for technical expertise, with specific allocations for each recommended annually by the commission and approved by the governor and legislature.

(b) The allocation of WRCSP funds shall be made by the commission on or after July 1 to districts or other entities receiving funds.

(c) Appropriated funds for cost-share assistance shall be allocated to districts under three accounts:

(1) The district needs allocation (DNA) shall represent a portion of the total WRCSP appropriation and shall be allocated to all districts. The total amount of the appropriation dedicated to the DNA shall be recommended by the commission and shall be subject to approval by the governor and legislature. The DNA may be used for eligible conservation and water quality improvement practices as determined by the conservation districts. The approved DNA shall be allocated to districts based on the following criteria:

(A) Non-federal rural acres: one point for each 100,000 acres, with a maximum point total of eight;

(B) water quality: ranging from one point for districts in low sedimentation areas up to eight points for districts in high sedimentation areas; and

(C) water quantity: ranging from one point for districts in areas of high rainfall and significant surface water storage up to eight points for districts in areas of low rainfall, limited surface water storage, and depleting groundwater supplies.

(2) The water quality (WQ) or total maximum daily load (TMDL) allocation shall represent a portion of the balance of the appropriation remaining after the DNA is deducted. WQ or TMDL funds may be allocated by the commission to districts if the following requirements are met:

(A) The WQ allocation shall be used only in targeted areas identified by the state water plan and commission for eligible practices that address sedimentation, nutrient and pesticide runoff, and bacteria from livestock waste.

(B) The TMDL allocation shall be utilized in the identified watersheds for only those practices that address the impairment for which the TMDL was established.

(3) The annual irrigation initiative allocation (IIA) shall be made by the commission in accordance with the following criteria:

(A) The amount remaining after the DNA and WQ allocation are deducted;

(B) commission-developed targeting criteria based on irrigation water use in areas of major groundwater decline;

(C) state water plan priority areas;

(D) other priority areas with declining ground- water supplies as identified by the governor, legislature, agencies, groundwater management and conservation districts; and

(E) any other criteria determined by the commission to meet the water resource goals and objectives of the state. (Authorized by and implementing K.S.A. 2-1915; effective, T-88-18, July 1, 1987; effective May 1, 1988; amended Aug. 23, 2002.)

**K.A.R. 11-1-8 Conservation district program.** Each participating district board of supervisors shall develop and submit to the commission for approval, upon commission-prescribed forms, the district's fiscal year financial assistance program under the following provisions: (a) The district shall develop the program after receiving the state program forms and a list of eligible practices from the commission.

(b) Each participating district shall develop annual financial assistance prioritization criteria following commission guidelines, upon which the district shall base its considerations for cost-sharing.

(c) In the installation of any eligible practices, the landowner shall be solely responsible for assuring compliance with any applicable federal, state, or local laws, ordinances, and regulations. The landowner also shall be solely responsible for obtaining all permits, licenses, or other instruments of permission required before the installation of the proposed practice.

(d) Unless a special allowance is granted by the commission, the minimum standards of design, construction, operation, and maintenance specified in section IV of the "Kansas field office technical guide," as adopted by reference in K.A.R. 11-7-14 and the other standards adopted by the commission in K.A.R. 11-7-14 shall be the basis for determining the need and practicability of the proposed practice. Specifications for additional soil and water conservation and water quality pollution control practices not set forth in section IV of the "Kansas field office technical guide," and modifications to those included in the technical guide may be considered and authorized by the commission at the request of the district. Practice descriptions and specification information shall be on file in the district office.

(e) A responsible technician or a qualified representative of the district, as determined by the district board of supervisors, shall inspect the work in progress to determine that all specifications are met. Following each installation, the district shall certify to the commission that the practice was properly installed.

(f) Financial assistance levels set by the district shall not exceed 70% of the actual cost or the countywide average cost, whichever is less, and shall not change during the fiscal year unless a specific allowance is granted by the commission.

(g) The maximum amount of financial assistance allowed for each practice, except \$20,000 for livestock waste systems and irrigation systems, shall be \$10,000 unless exempted by the commission.

(h) Each district shall submit to the commission, in writing, all amendments to the district program for commission approval or disapproval. The only permissible amendments shall be the following:

(1) Changes in district representatives authorized to sign cost-share forms;

(2) the addition of conservation practices within the current year; and

(3) county average costs under exceptional circumstances. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective, T-88-18, July 1, 1987; effective May 1, 1988; amended Aug. 23, 2002.)

**K.A.R. 11-1-9 Financial assistance contract.** (a) Each request for a financial assistance payment shall be submitted to the district on forms prescribed by the commission. All requests submitted on commission-prescribed forms shall be considered for approval or disapproval by the district board of supervisors or its designee and duly recorded in the minutes of the regularly scheduled board meeting.

(b) Financial assistance requests shall be consistent with each district's current fiscal year program as approved by the commission, and all commission requirements and procedures shall be followed in the submittal of financial requests.

(c) The actual cost or county average cost, whichever is less, shall be used as a basis for determining financial assistance earned.

(d) (1) The applicant shall not begin construction until written approval of the submitted request is given by the commission to the district, unless the commission determines that an exception is warranted.

(2) If the applicant requests immediate approval, verbal approval may be given by the commission if either of the following conditions is met:

(A) The practice has been designed and surveyed, and the contractor or installer is at the site and ready to proceed with practice construction on the same day that the request is made.

(B) The commission will not receive the financial assistance request form before an uncommitted funds cancellation deadline.

(e) Partial payments shall not be awarded to an applicant approved for financial assistance, unless specifically granted by the commission, until the project is certified as complete and includes all components installed according to the design and installation requirements of the commission.

(f) Each contract shall be assigned by the commission an expiration date of 60 days following the date the contract is approved by the commission if the conservation district does not assign the expiration date.

(g) Districts may grant an extension of any length of time during the contract period but not beyond June 30.

(h) Contract cancellation and amendments of an approved contract shall be considered by the district for approval or disapproval and shall be duly recorded in the regularly scheduled board of supervisors' meeting minutes. If a cancellation or amendment is approved by the commission, the district shall retain one copy and forward one copy to the applicant or legal agent.

(i) Each applicant implementing a livestock waste control system funded from the water resources cost-share program shall ensure that the system meets the requirements specified in K.A.R. 11-7-14.

(j) The district shall submit the original of each completed and signed contract, on a commission-approved form, to the commission for approval or disapproval. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective Aug. 23, 2002.)

**K.A.R. 11-1-10 Cancellation of funds.** (a) A status report of all active contracts and each district's uncommitted balance shall be prepared by the commission on or after June 1 and shall be provided to each district.

(b) Cost-share funds uncommitted and not under contract at the close of business on June 30 shall become void.

(c) Cost-share funds under contract for practices on which construction has not begun by June 30 shall be individually evaluated by the commission and may be encumbered and continued for one or more years or may become void.

(d) Cost-share funds under contract for practices on which construction has not begun by June 30, due to inclement weather or other factors beyond the control of the applicant, shall be individually evaluated by the commission and may be encumbered and continued for one or more years.

(e) Cost-share funds under contract for practices on which construction has begun but has not been completed by June 30 may be encumbered and continued for one year.

(f) Encumbered contracts not completed within the year of encumbrance may expire and become void, if not extended by the commission.

(g) Any contract may be extended by the commission if the contract is determined by the commission to be highly significant in pollution reduction. (Authorized by and implementing K.S.A. 2-1915; effective Aug. 23, 2002.)

**K.A.R. 11-1-11 Contract between the landowner and the state conservation commission.** (a) Each applicant for financial assistance shall sign a contract on the form or forms approved by the commission.

(b) The applicant shall agree to maintain the practice according to maintenance procedures prescribed by the commission for 10 years or the life of the practice, whichever is greater.

(c) If the financial assistance recipient fails to maintain the practice according to contract provisions, the recipient may be declared ineligible for future financial assistance funds. The financial assistance recipient may be required to repay financial assistance funds received on the following pro rata basis if the amount is more than \$100.00 and the recipient has constructed or installed the practice within the following time limits:

(1) Five or fewer years: 100%;

(2) more than five years but six or fewer years: 80%;

(3) more than six years but seven or fewer years: 60%;

(4) more than seven years but eight or fewer years: 40%;

(5) more than eight years but nine or fewer years: 20%; and

(6) more than nine years but 10 or fewer years: 10%.

(d) Each recipient of state financial assistance for any pollution control practice shall be responsible for proper operation and maintenance and, if needed, modification of the facility or any other actions to ensure satisfactory operation and continued pollution control, at the recipient's expense.

(e) Each financial assistance recipient shall obtain a written agreement to transfer the maintenance responsibilities specified in the event of new ownership of the property where the practice was installed.

(f) If a recipient of financial assistance is determined by the commission to be in noncompliance with the requirements of the contract for financial assistance, upon notice by the district, the recipient shall bring the property into compliance within the time specified by the commission, or the repayment provisions of the application contract outlined in subsection (c) above shall apply. (g) The provisions of the financial assistance application contract shall not apply to a recipient of financial assistance if the recipient's failure to comply is due to any of the following:

(1) Natural disasters;

(2) faulty design or construction, as determined by the commission; or

(3) any other situation beyond the control of the financial recipient. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective Aug. 23, 2002.)

**K.A.R. 11-1-12 Special projects.** (a) Funds may be withheld by the commission from the annual appropriation, and funds released by the districts may be reserved by the commission for the purpose of cost-sharing or contributing to special projects that the commission considers necessary and of high priority for the abatement of soil erosion and water pollution, and for conservation of water resources.

(b) (1) Authority shall rest with the commission to fund special projects for the purpose of testing, development, implementation, and demonstration of new cost-share practices appropriate for future soil and water conservation and water quality needs.

(2) Special projects may be funded by the commission from annual appropriations if the projects are determined to be essential to increasing the effectiveness and efficiency of the cost-share program.

(c) Special projects shall be conducted for a specified period of time and in a limited area as determined by the commission. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective Aug. 23, 2002.)

**K.A.R. 11-1-13 Irrigation funding procedures.** (a) Eligible applicants shall include the following:

(1) Landowners; and

(2) tenants or operators granted authority by landowners through power of attorney.

(b) If cost-share funds are utilized to convert nonirrigated land, which is also known as land with no water right, an equal amount of previously irrigated land shall be taken out of irrigated production, unless an exception is granted by the commission.

(c) Before project approval, the applicant shall provide the district with verification of the following:

(1) The allowable pump rate;

(2) the location and the amount of the land authorized for irrigation; and

(3) a valid water right in good standing.

(d) Each approved applicant for irrigation practice financial assistance shall review and sign a conservation plan of operations (CPO) and an irrigation development plan prepared by the natural resources conservation service. Failure to implement the requirements of the CPO due to neglect by the irrigator may result in payback of cost-share funds by the recipient according to the guidelines specified in K.A.R. 11-1-11.

(e) Each application for financial assistance for irrigation practices shall meet eligibility requirements based on the estimated cost of potential water savings. Potential water savings shall be determined using table KS6-1 of the natural resource conservation service's "irrigation guide," as in effect January 2002 and hereby adopted by reference. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective Aug. 23, 2002.)

**K.A.R. 11-1-14 Petition for reconsideration.** (a) A landowner who has been denied cost-share funding may request a reconsideration of a district decision by filing a petition for reconsideration.

(b) The petition for reconsideration shall be submitted in writing to the commission within 30 days of the decision and shall state why the decision of the district should be reviewed and why the decision should be modified or reversed.

(c) The petition shall be reviewed by the commission during the next scheduled commission meeting. Whether the decision should be affirmed, modified, or reversed shall be determined by the commission. The final decision shall state the reason or reasons for this determination. (Authorized by K.S.A. 2-1904; implementing K.S.A. 2-1915; effective Aug. 23, 2002.)